

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT WILSON, *et al.*,

Plaintiffs,

v.

MAXIM HEALTHCARE SERVICES, INC.,

Defendant.

Case No. C14-789RSL

ORDER GRANTING MOTION FOR
CONDITIONAL CERTIFICATION

This matter comes before the Court on plaintiffs’ pre-discovery motion for conditional certification of a collective action. Dkt. # 10. Having reviewed the memoranda, declarations, and exhibits submitted by the parties, the Court finds as follows.

I. BACKGROUND

In May 2014, named plaintiffs Robert Wilson and Eric McNeal filed this case as a collective action seeking to recover unpaid wages under § 216(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.* Dkt. # 1 (Compl.). Plaintiffs were employed as Staffing Recruiters for defendant. *Id.* ¶¶ 11-12. They contend that during their employment with defendant they were misclassified as exempt from overtime compensation and thus wrongly denied this compensation for time worked in excess of 40 hours per week, in violation of the FLSA and Washington’s Minimum Wage Act, R.C.W. § 49.46, *et seq.* *Id.* ¶¶ 39- 60.

Plaintiffs filed the instant motion on July 15, 2014, seeking conditional certification of a

ORDER GRANTING MOTION FOR
CONDITIONAL CERTIFICATION - 1

1 nationwide collective action consisting of all of defendant's current and former Staffing
2 Recruiters who worked for defendant "during the past three years". Dkt. # 10 at 1. Plaintiffs
3 seek conditional certification so that notice may be sent to potential class members notifying
4 them of this action and their ability to "opt-in." Id. at 3-4. Plaintiffs request that the Court order
5 defendant to produce the names, job titles, contact information and certain employment and
6 personal information of these employees, as well as approve the proposed notice that plaintiffs
7 have provided. Id. at 1-3. Named plaintiffs and three other "opt-in" plaintiffs (who also worked
8 for defendant as Recruiters) have filed five declarations in support of the instant motion. Dkt.
9 ## 5-7, 31.

10 Plaintiffs agreed to renote their motion for September 28, 2014. Dkt. # 22. In August
11 2014, the Court denied defendant's request to engage in limited expedited discovery concerning
12 whether the case should proceed as a collective action. Dkt. # 28.

13 Defendant Maxim Healthcare Services, Inc. ("Maxim") provides recruiting services on a
14 nationwide basis to a wide variety of clients. Dkt. # 34 (Goldberg Decl. ¶ 2). Defendant's
15 argument in response to plaintiffs' motion is that plaintiffs cannot make the requisite showing at
16 this stage of litigation that they are "similarly situated" to the putative class members, given the
17 wide variety of job duties that defendant's Staffing Recruiters perform across its various
18 business lines. Dkt. # 32. Defendant has produced declarations from 12 Recruiters in support of
19 its opposition to plaintiffs' motion, Dkt. ## 35-46, along with a declaration from a Maxim
20 executive speaking to the varied nature of Recruiters' roles and responsibilities within Maxim,
21 Dkt. # 34 (Goldberg Decl.).

22 II. LEGAL STANDARDS

23 A. Collective Action Certification

24 The FLSA requires covered employers to pay their employees a minimum wage and
25 overtime wages for hours worked in excess of 40 per week, 29 U.S.C. §§ 206, 207, and provides
26 that an employee may bring a collective action on behalf of himself and other "similarly
27

1 situated” employees for violating the Act, 29 U.S.C. § 216(b). In contrast to class actions
 2 brought pursuant to Fed. R. Civ. P. 23, § 216(b) collective actions are “opt-in,” meaning that
 3 employees who seek to join the action must file a written consent with the district court.
 4 Bollinger v. Residential Capital, LLC, 761 F. Supp. 2d 1114, 1119 (W.D. Wash. 2011). A
 5 purported class member’s statute of limitations continues to run until he joins the collective
 6 action. Centurioni v. City and Cnty. of San Francisco, 2008 WL 295096, at *3 (N.D. Cal. Feb.
 7 1, 2008). The decision whether to certify a collective action is within the discretion of the
 8 district court, and plaintiffs bear the burden of showing that they and the putative class members
 9 are “similarly situated.” Adams v. Inter-Con Sec. Sys., 242 F.R.D. 530, 535 (N.D. Cal. 2007)
 10 (citation omitted).

11 The FLSA does not define the term “similarly situated,” and the Ninth Circuit has not yet
 12 interpreted the term; nevertheless, courts in this Circuit apply a two-step inquiry to determine
 13 whether a collective action should be certified, involving preliminary and then final
 14 determinations of whether class members are “similarly situated.” Benedict v. Hewlett-Packard
 15 Co., 2014 WL 587135, at *5 (N.D. Cal. Feb. 13, 2014); Bollinger, 761 F. Supp. 2d at 1119;
 16 Wynn v. Nat’l Broad. Co., Inc., 234 F. Supp. 2d 1067, 1082 (C.D. Cal. 2002).

17 **(i). Conditional Certification**

18 At the first stage, the Court determines whether the representative plaintiffs and putative
 19 class members are “similarly situated” such that a collective action should be conditionally
 20 certified for the purpose of sending notice of the action to the latter (so that they may decide
 21 whether to opt in). Benedict, 2014 WL 587135, at *5. At this “notice stage,” the Court requires
 22 little more than “substantial allegations,” supported by evidence, that the entire proposed class
 23 was subject to a “single decision, policy or plan that violated the law.” Id. (citation omitted).
 24 “Because there is little evidence before the court at this stage, the court must rely on the
 25 pleadings and affidavits submitted by the parties in deciding whether potential plaintiffs should
 26 receive notice.” Bollinger, 761 F. Supp. 2d at 1119. The “similarly situated” standard at this

1 phase is fairly lenient and typically results in certification, Kress v. PricewaterhouseCoopers,
2 LLP, 263 F.R.D. 623, 627-28 (E.D.Cal. 2009) (citation omitted). While the “similarly situated”
3 standard here is “considerably less stringent” than Rule 23’s requirement that common questions
4 predominate over individual ones, courts seek an indication that hearing plaintiffs’ claims
5 together will promote judicial economy, as well as serve the remedial purposes of the FLSA.
6 See Benedict, 2014 WL 587135, at *5 (citations omitted); Wood v. TriVita, Inc., 2009 WL
7 2046048, at *4 (D. Ariz. Jan. 22, 2009).

8 In “misclassification” cases such as this one, where the plaintiffs’ theory is that defendant
9 misclassified them as exempt, the plaintiffs must show that they and the putative class members
10 performed similar job duties. Kress, 264 F.R.D. at 629-30; Trinh v. JP Morgan Chase & Co.,
11 2008 WL 1860161, at *13 (S.D. Cal. Apr. 22, 2008). This is because the Court’s concern in
12 such cases is “whether plaintiffs’ evidence indicates that the propriety of the classification may
13 be determined on a collective basis.” Benedict, 2014 WL 587135, at *8 (quoting Kress, 263
14 F.R.D. at 630). The nature of an employee’s job duties dictates whether he falls under an
15 exemption, and thus the similarities between employees’ duties dictates whether their claims
16 should be tried together. See Kress, 264 F.R.D. at 629-30; Trinh, 2008 WL 1860161, at *13.
17 Some courts have also emphasized whether plaintiffs can show that they and the putative class
18 members fell under similar compensation schemes, Trinh, 2008 WL 1860161, at *3; Bollinger,
19 761 F. Supp. 2d at 1119; or whether plaintiffs have provided some indication that their claims
20 would rely on common evidence. See, e.g., Trinh, 2008 WL 1860161, at *5. But see Hensley v.
21 Eppendorf N. Am., Inc., 2014 WL 2566144, at *7 (S.D. Cal. June 6, 2014) (showing of common
22 proof not necessary at the notice stage where the court could infer its existence from the
23 evidence presented). Critically, plaintiffs need not conclusively establish that collective action is
24 proper, because defendants will be free to revisit this issue at the close of discovery. Kress, 264
25 F.R.D. at 630.

1 **(ii). Decertification**

2 The second stage occurs after discovery is complete, usually on defendant's motion to
3 decertify. Khadera v. ABM Indus., Inc., 701 F. Supp. 2d 1190, 1194 (W.D. Wash. 2010). At
4 this point, the Court uses a stricter standard for determining whether the plaintiffs are similarly
5 situated. Troy v. Kehe Food Distributors, Inc., 276 F.R.D. 642, 649 (W.D. Wash. 2011). The
6 Court must consider several factors at this stage, including the specific duties and conditions of
7 employment of the individual plaintiffs, and the various defenses available to the defendant with
8 respect to the individual plaintiffs. Id.; Romero v. Producers Dairy Foods, Inc., 235 F.R.D. 474,
9 482 (E.D. Cal. 2006). If the Court, considering the additional evidence acquired during
10 discovery, determines that the plaintiffs are not similarly situated, it may decertify the class and
11 dismiss the opt-in plaintiffs without prejudice. Romero, 235 F.R.D. at 482. Occasionally, courts
12 skip the lenient first-stage analysis and proceed directly to applying a second-stage level of
13 scrutiny where substantial discovery has been completed. Smith v. T-Mobile USA, Inc., 2007
14 WL 2385131, at *4 (C.D. Cal. Aug. 15, 2007) (collecting cases).

15 **B. Administrative Exemption**

16 Although the Court is not ruling on the merits of plaintiffs' claims at this stage, it is
17 relevant to note the substantive basis for their collective action. An employee is exempt from 29
18 U.S.C. § 207 if he is employed in an "administrative" capacity. 29 U.S.C. § 213(a)(1). An
19 employee receiving a salary of over \$455 per week is administrative if his "primary duty" is "the
20 performance of office or non-manual work directly related to the management or general
21 business operations of the employer or the employer's customers," and his "primary duty
22 includes the exercise of discretion and independent judgment with respect to matters of
23 significance." 29 C.F.R. §§ 541.200(a)(2-3); 541.600(a). In turn, work directly relates to an
24 employer's management or general business operations where it directly relates "to assisting
25 with the running or servicing of the business." 29 C.F.R. § 541.201(a). This does not include
26 merely "the day-to-day carrying out" of the business' affairs. Bothell v. Phase Metrics, Inc., 299

1 F.3d 1120, 1125 (9th Cir. 2002). An employee's primary duties must constitute exempt work for
2 him to fall under the administrative exemption, 29 C.F.R. § 541.700; and determining an
3 employee's primary duties requires examining "all the facts in a particular case" and "the
4 character of the employee's job as a whole." 29 C.F.R. § 541.700(a). Regulations emphasize
5 that a job title alone is insufficient to establish an employee's exempt or nonexempt status, and
6 that the employee's "salary and duties" are determinative. 29 C.F.R. § 541.2.

7 **III. DISCUSSION**

8 Consistent with its prior order denying limited expedited discovery, Dkt. # 28, the Court
9 will rule on plaintiffs' motion for conditional certification under the lenient standard generally
10 applied at the notice stage. Thus, the question before the Court is whether plaintiffs and the
11 proposed class members are similarly situated with respect to a common policy or plan
12 established by defendant that violated the law.

13 **A. Declarations Considered**

14 The Court notes up front that both parties' sets of declarations raise non-fatal reliability
15 concerns. Defendant's current-employee declarants were potentially chosen selectively from the
16 nationwide class, and courts in this District and this Circuit have expressed distrust with such
17 declarations on the grounds that the declarants could have felt pressure to absolve their
18 employers. See, e.g., Morden v. T-Mobile USA, Inc., 2006 WL 2620320, at *3 (W.D. Wash.
19 Sept. 12, 2006). Plaintiffs' declarations in turn can be accurately characterized as "cookie
20 cutter" affidavits, largely identical. However, this does not discredit plaintiffs' declarations at
21 this stage. Sanchez v. Sephora USA, Inc., 2012 WL 2945753, at *2 (S.D. Cal. Jul. 18, 2012).
22 More problematically, plaintiffs' declarations are few and brief, are limited to employees from
23 two offices in two states, and mostly if not entirely come from employees in the same business
24 line (Nurse Staffing).¹ The question is whether such a handful of declarations can suffice to

25 ¹ Plaintiffs' motion makes clear that its declarants were only based in Missouri and Washington.
26 Dkt. # 10 at 16. It is not clear whether opt-in plaintiffs Melissa Bettorf and Laura Phipps were in the
27 Nurse Staffing business line.

1 suggest that their authors are similarly-situated to every Maxim Staffing Recruiter in the country,
2 especially in light of defendant's affidavits.

3 The Court finds that the declaration of Melissa Bettorf is admissible and the declaration
4 of Laura Phipps must be excluded.² This leaves plaintiffs with attempting to conditionally
5 certify a nationwide class of potentially hundreds with four declarations concerning three offices
6 in two states.³ Certifying a nationwide class in a misclassification case on a small number of
7 declarations is not unprecedented in this Circuit. Sanchez, 2012 WL 2945753, at *3
8 (conditionally certifying nationwide class on the basis of five employee declarations
9 representing different "retail establishments, regions, and districts"); Gilbert v. Citigroup, Inc.,
10 2009 WL 424320, at *4 (N.D. Cal. Feb. 18, 2009) (conditionally certifying nationwide class on
11 the basis of five declarations representing employees' experiences at seven of defendants'
12 California branch offices, where defendants anticipated the class size would approximate 878
13 employees from 10 states). The general rule for this Circuit is that "[a] plaintiff need not submit
14 a large number of declarations or affidavits to make the requisite factual showing that class
15 members exist who are similarly situated to him. A handful of declarations may suffice."
16 Benedict, 2014 WL 587135, at *6 (citing cases) (conditionally certifying nationwide class based
17 on 30 declarations). Therefore, plaintiffs have submitted sufficient evidence for their motion to
18 be seriously considered.

20 ² Defendant argues that Bettorf's declaration should be excluded because her claim is barred by
21 an arbitration agreement. Dkt. # 32 at 9. Even if this were the case, defendant has presented no
22 evidence or authority to suggest that this Court should not consider Bettorf's declaration "evidence" for
23 the purposes of ruling on the instant motion even if she may not participate as a party. See Sanchez,
24 2012 WL 2945753, at *1 n. 1 (considering the declaration of an opt-in plaintiff whom defendants argued
25 was not an employee during the class period, ruling that this was "not germane" to the Court's analysis).
26 Phipps' declaration was introduced on reply and therefore will be excluded. Generally, this Court will
27 not consider evidence submitted on reply, as the opposing party does not have the opportunity to
28 respond. See, e.g., Cabell v. Zorro Prods., Inc., 2014 WL 5364444, at *3 (W.D. Wash. Oct. 21, 2014)
(striking evidence submitted on reply to motion for summary judgment).

³ While Bettorf's declaration does not state that she worked for defendant in Missouri, as
plaintiffs' motion indicates, Dkt. # 10 at 16, this is implied by her consent form, Dkt. # 9-1.

B. Common Policy or Plan

It is undisputed that all Recruiting Staffers were classified and treated as exempt regardless of their duties, and Defendant's own affidavits indicate that Recruiters may work more than 40 hours per week, e.g., Dkt. # 41 (McIntosh Decl. ¶ 27). The alleged unlawful policy or plan at issue, therefore, is depriving Recruiters of overtime pay. The question before the Court is thus whether plaintiffs and putative class members were similarly situated with respect to their job duties.⁴ Kress, 264 F.R.D. at 629-30.

C. Similarly Situated With Regards to Duties

(i). Evidence Presented

Plaintiffs' evidence largely consists of their four remaining declarations and a list of job postings (pulled from defendant's website) for the "Healthcare Recruiter/Entry Level Sales Management" position. All of plaintiffs' postings state the following under the job description:

Healthcare Recruiter Core Responsibilities include:

• Support and sustain Maxim's commitment to compliance

- Maintain awareness and understanding of compliance—Maxim business policies and Code of Conduct, Federal/State Regulations, and contract-specific requirements
- Participate in core compliance training and activities
- Identify and communicate areas of risk and potential improvement opportunities

• Recruit potential caregivers

- Locate Healthcare professionals through various sources, including the Internet, referrals, nursing schools, direct mail and job fairs
- Facilitate the hiring process, which includes interviewing and screening candidates
- Demonstrate the ability to guide a candidate through Maxim's hiring process
- Present qualified candidates to clients

⁴ Defendant suggests that the Court should not presume for the purposes of this motion that its classification policy "violated the law," given that defendant's affidavits demonstrate that many Staffing Recruiters were properly classified as exempt given their responsibilities. Dkt. # 32 at 10, 25. The Court finds this merits-based argument more properly considered at the second stage of analysis. See Benedict, 2014 WL 587135, at *11 ("Courts routinely hold that the potential applicability of an FLSA exemption does not preclude conditional certification.") (citation and quotation marks omitted) (collecting cases); see also Stickle v. SCI W. Mkt. Support Ctr., L.P., 2009 WL 3241790, at *3 (D. Ariz. Sept. 30, 2009) (at the notice stage, "courts do not review the underlying merits of the action."). Defendant's more specific argument is that determining whether class members were properly classified as exempt will require excessive individualized inquiry, and that this consideration outweighs all factors supporting notice certification. The Court addresses this argument infra.

1 • **Assist in the Sales Process**

- 2 ○ Manage healthcare professionals and place them on top medical assignments
3 ○ Consult with clients to provide appropriate staffing solutions
4 ○ Identify and/or resolve client customer service issues
5 ○ Provide 24 hour support to our clients
6 ○ Analyze financial reports and edit weekly payroll
7 ○ Assist Accounts Manager in prospecting new business

8 • **Communicate effectively**

- 9 ○ Maintain direct communication with candidates, clients, and team members
10 during the recruiting process
11 ○ Resolve client customer service issues

12 • **perform all other duties as assigned**

13 Dkt. # 11-8 at 2 (emphasis in original).

14 Plaintiffs' declarations set out the following propositions. Plaintiffs had an "entry-level"
15 position at Maxim with duties including (but "not limited to") the following:

16 (1) [A]ssisting in the placement process for healthcare professionals by screening
17 potential candidates regarding their minimum qualifications and fitness for employment
18 in accordance with the standards set forth by Maxim and my superiors; (2) recruiting
19 potential candidates from various internet sites, schools, direct mail, job fairs, and cold
20 calls; (3) answering the phone; (4) inputting payroll hours for billing purposes; (5)
21 assisting in scheduling the healthcare professionals; and (6) providing 24-hour support to
22 Maxim's clients.

23 Dkt. ## 5-7, 31 (Pls.' Decls. ¶ 2).⁵ Additionally, while they "facilitated the hiring process," they
24 lacked the discretion, judgment or ability to make decisions concerning hiring, firing, rates of
25 pay, placement fees, job performance, disciplinary matters or specific job duties. *Id.* ¶ 3. They
26 worked a similar schedule of 8 am to 6 pm or 7 am to 5 pm, remaining on call 24 hours per day
27 for several days a week, and often working more than 40 hours a week without receiving
28 overtime compensation. *Id.* ¶ 4.

Defendant offers evidence and declarations pointing to a number of distinctions between
the duties described by plaintiffs and those of other Recruiters. In response to the job postings
and descriptions provided by plaintiffs, defendant offers its own list of job postings and
descriptions to show that different types of Recruiters have different responsibilities. Dkt. # 34-
1. For example, Senior Recruiters are expected to help develop working relationships with

⁵ Because they are identical, plaintiffs' declarations are cited collectively, here.

1 Maxim clients, select internal staff and assist with the orientation process for new “external
2 employees.”⁶ Id. at 9-10. Recruiters in the Government Services business line are expected to
3 evaluate staff performance and counsel external staff members on performance issues. Id. at 17.
4 Recruiting Team Leaders for the TimeLine business line are expected to manage and supervise
5 their teams of Search Consultants. Id. at 25. Direct Placement Managers for the Travel Division
6 are expected to screen, hire and train personnel. Id. at 41. However, the Court also sees
7 parallels between the duties listed in many of these descriptions and the evidence offered by
8 plaintiffs: Recruiters are expected to identify and solicit candidates, id. at 48 (Travel Division
9 Recruiter); facilitate the hiring and screening process for these candidates, id. at 48 (Travel
10 Division Recruiter), 52 (Physician Consultant); and provide 24-hour support to clients, id. at 38
11 (Professional Recruiter).

12 Defendant also offers the declaration of Jeremy Goldberg, currently a Vice President of
13 Business Development, who has extensive knowledge of Maxim’s Recruiter workforce and their
14 responsibilities. Dkt. # 34 (Goldberg Decl.). Goldberg’s declaration explains at length and in
15 detail Maxim’s types of Recruiters and how their duties and work experiences differ based on
16 factors such as their rank, geography and division within the company. See generally id.
17 However, two general statements strike the Court as particularly relevant to its notice-stage
18 analysis. On one hand, according to Goldberg, Staffing Recruiters are expected to “counsel,
19 coach, and discipline external employees on performance issues,” and when necessary
20 “terminate or remove them from a particular client’s site,” denoting a level of responsibility
21 greater than that conveyed by plaintiffs’ declarations. Id. ¶ 34. However, their core functions
22 also include “critical aspects of the hiring process [for clients], including sourcing, recruiting,
23 screening, evaluating, interviewing, selecting, and hiring external employees.” Id. ¶ 33. While
24 plaintiffs did not attest to having final authority to hire, this is otherwise highly consistent with
25

26 ⁶ External employees are temporary health care personnel that Maxim Recruiters hire and place
27 with their clients. Dkt. # 34 (Goldberg Decl. ¶¶ 11, 16).

1 plaintiffs' descriptions of their day-to-day functions. While not a significant item in Goldberg's
2 declaration, the Court further notes that Maxim has apparently "expanded" the use of
3 administrative personnel such as "Credentialing Coordinators" so that Staffing Recruiters may
4 focus on performing the aforementioned core functions, further suggesting similarities in the
5 putative class members' day-to-day responsibilities. Id. ¶ 27.

6 Defendant's Recruiter declarants further suggest varying responsibilities and work
7 experiences. The declarants have interviewed job candidates for a range of factors arguably or
8 clearly reaching beyond their "minimum qualifications." E.g., Dkt. # 35 (Guinn Decl. ¶ 13); Dkt.
9 # 38 (Kuhn Decl. ¶ 8); Dkt. # 44 (Maravich Decl. ¶ 12). They have been paid under various
10 compensation schemes. E.g., Dkt. # 35 (Guinn Decl. ¶ 28); Dkt. # 38 (Maravich Decl. ¶ 6); see
11 generally Dkt. # 34 (Goldberg Decl. ¶¶ 29, 31-32). They have enjoyed varying degrees of
12 authority to negotiate pay rates with external employees. E.g., Dkt. # 36 (Wright Decl. ¶ 15);
13 Dkt. # 43 (Taylor Decl. ¶ 14). They have coached and disciplined employees, e.g., Dkt. # 40
14 (Nuccio Decl. ¶¶ 15-16); and some have had the discretion to terminate external employees with
15 or without manager approval, e.g., Dkt. # 41 (McIntosh Decl. ¶ 16); Dkt. # 45 (Garver Decl.
16 ¶ 16).

17 Defendant's declarants suggest that they have enjoyed significantly greater roles in the
18 external hiring process than plaintiffs: for example, one claims to have made hiring
19 recommendations that were seriously considered, Dkt. # 45 (Garver Decl. ¶ 12); another claims
20 that he currently has the authority to hire external employees and that their "Account Manager"
21 merely signs-off on the hiring as a formality, Dkt. # 36 (Wright Decl. ¶ 16); and another claims
22 to have been given "sole discretion" to decide whom to hire and place with a number of his
23 clients, Dkt. # 38 (Kuhn Decl. ¶ 9). Defendant emphasizes that its declarants (and Staffing
24 Recruiters in general) recruit various types of employees to place with various types of clients,
25 suggesting that this imposes different duties on different Recruiters. Dkt. # 32 at 18-19.

26 Although plaintiffs did not speak to these issues, defendant emphasizes that its declarants

1 have been involved in training and supervising other Recruiters, e.g., Dkt. # 35 (Guinn Decl.
 2 ¶ 27); Dkt. # 38 (Kuhn Decl. ¶ 16); and have participated in sales activities and client
 3 development, e.g., Dkt. # 35 (Guinn Decl. ¶ 23); Dkt. # 37 (Rayburg Decl. ¶¶ 25-26). Finally,
 4 defendant emphasizes that those Recruiters who are promoted to the level of “Senior Recruiter”
 5 enjoy a widened range of responsibilities, including additional duties in the areas of training
 6 Recruiters, hiring internal employees, and interacting with clients. E.g., Dkt. # 38 (Kuhn Decl.
 7 ¶ 16); Dkt. # 41 (McIntosh Decl. ¶¶ 22-23); Dkt. # 45 (Garver Decl. ¶¶ 20-22, 26). Defendant
 8 also emphasizes that “Professional Recruiters” have significantly different responsibilities from
 9 those plaintiffs described were part of their “entry-level” position; e.g., they develop recruiting
 10 and training strategies for Maxim offices. Dkt. # 38 (Kuhn Decl. ¶¶ 18, 24-26).

11 The Court notes, however, that defendant’s declarations bear certain key similarities to
 12 plaintiffs’, namely in that a number of defendant’s Recruiters speak to carrying-out the same
 13 core job duties in terms of identifying, soliciting, and screening employment candidates for
 14 clients. Dkt. # 41 (McIntosh Decl. ¶¶ 19, 27); Dkt. # 44 (Maravich Decl. ¶ 12); Dkt. # 45
 15 (Garver Decl. ¶ 7).

16 (ii). “Similarly Situated” Finding

17 The Court finds enough here to satisfy the lenient “similarly situated” standard applied at
 18 the notice stage and merit conditionally certifying a nationwide class (and sending notice to
 19 potential class members). The record as a whole suggests strong similarities between Recruiters’
 20 core duties (principally in terms of vetting candidates for hiring), and the Court appreciates that
 21 members of an employment collective action will not all have identical work experiences. The
 22 Court is unconvinced at this point that it would be unmanageable to aggregate class members’
 23 claims and collectively adjudicate whether their roles were administrative for the purposes of the
 24 FLSA. The Court will revisit the issue after discovery. Plaintiffs’ declarations are not too few,
 25 too unspecific or too discordant with the rest of the record to fail at the notice stage. Given the
 26 nature of the alleged nationwide FLSA violation and the apparent presence of similar plaintiffs
 27

1 in multiple states, the Court sees no reason to limit this class geographically.

2 **(iii). Concerning Individualized Inquiries**

3 Determining whether an employee falls under the administrative exemption of the FLSA
4 is a fact-intensive inquiry that requires examination of their duties and their level of discretion
5 and independence in undertaking these duties. See In re Farmers Ins. Exch., Claims
6 Representatives' Overtime Pay Litig., 481 F.3d 1119, 1127 (9th Cir. 2007); 29 C.F.R.
7 §§ 541.700 (an employee's "primary duty" must be exempt work for him to fall under an
8 exemption); 541.700(a) (discerning an employee's primary duty requires reviewing all the facts
9 in a particular case). Defendant argues that, especially given the range of varying
10 responsibilities undertaken by its Recruiters, the Court should deny conditional certification
11 because the case will require too much individualized inquiry (to determine which Recruiters
12 were actually exempt) to ultimately prove efficient or even manageable. Dkt. # 32 at 22-23.

13 Courts in this Circuit frequently reject defendant's argument in misclassification cases at
14 the notice stage, on the grounds that the need for individualized inquiry may be more properly
15 assessed at the decertification stage, where the Court is armed with a more complete record on
16 which to rule. E.g., Davis v. Soc. Serv. Coordinators, Inc., 2012 WL 3744657, at *23 (E.D. Cal.
17 Aug. 28, 2012); Hensley, 2014 WL 2566144, at *7; Sanchez, 2012 WL 2945753, at *4.
18 However, certain courts have denied conditional certification on these grounds, namely where
19 plaintiffs provided no indication that they would rely on common evidence. See Litty v. Merrill
20 Lynch & Co., 2014 WL 5904907, at *10 (C.D. Cal. Aug. 4, 2014); Trinh, 2008 WL 1860161, at
21 *13. But see Hensley, 2014 WL 2566144, at *7 (court only needed to be able to infer the
22 existence of common evidence). This Court finds defendant's argument concerning
23 individualized inquiries unpersuasive at this stage. Plaintiffs have provided a reasonable basis to
24 believe that their claims may be adjudicated collectively, and further discovery may indicate that
25 the Court can effectively divide the collective action into subclasses in spite of the differences
26 presented. The Court may decertify the nationwide class if it finds that this cannot be done.

1 Thus, while defendant raises compelling points, this Court will rule on them once discovery is
2 substantially complete.

3 **D. Notice Process**

4 The parties are amendable to working together to finalize notice language, and plaintiffs
5 are amendable to a 60-day opt-in period commencing on the date that notice is sent. Dkt. # 50 at
6 11. Plaintiffs are also amendable to not sending notice to plaintiffs who are already bound by a
7 court-approved FLSA settlement and release. Id. at 12. The Court sees giving defendant 21
8 days to produce information concerning class members fair and prudent.

9 Plaintiffs will not be given the phone numbers of the potential opt-in plaintiffs receiving
10 notice, out of concern for the latter's privacy. However, consistent with precedent from this
11 District, the Court will order defendant to provide class members' email addresses in addition to
12 their last known physical addresses. See Thomas v. Kellogg Co., 2014 WL 716152, at *2 (W.D.
13 Wash. Jan. 9, 2014) (ordering defendants to produce both email addresses and telephone
14 numbers).

15 **IV. CONCLUSION**

16 For all of the foregoing reasons, the Court GRANTS plaintiffs' motion for conditional
17 certification. Dkt. # 10.

18
19
20 DATED this 22nd day of December, 2014.

21
22
23 

24 Robert S. Lasnik
25 United States District Judge
26
27